

REPORT ACCOMPANYING H.R. 4775

**House Report 107-480 - MAKING SUPPLEMENTAL APPROPRIATIONS
FOR FURTHER RECOVERY FROM AND RESPONSE TO TERRORIST
ATTACKS ON THE UNITED STATES FOR THE FISCAL YEAR ENDING
SEPTEMBER 30, 2002, AND FOR OTHER PURPOSES**

ADDITIONAL VIEWS OF DAVID R. OBEY

**PROVIDING THE RESOURCES NEEDED TO COUNTER
TERRORISTS**

This bill, like the Supplemental that Congress passed in December, contains a significant number of increases in counter-terrorism funding that were not requested by the President. In most instances, the add-ons contained in this bill are items that agency heads appointed by this administration asked the Office of Management and Budget to include in the President's Budget. While the Committee itself decided that many of the items which Executive Branch agencies requested were not urgent enough to fund at this time, it is fair to say, that on a bipartisan basis we were struck by the number of compelling requests for counter-terrorism funds that the Office of Management and Budget rejected. To put it bluntly, we are increasingly mystified as to why the administration's tough rhetoric on terrorism is not translated into its budget policy.

It would be far better if such issues could be resolved by thoughtful discussion between those with differing perspectives--particularly at a time when our homeland security is so seriously threatened. Issues like this--at times like this--should not become a matter for open conflict between the branches of government or between the two political parties. We have sought to have discussions and reconcile differences. Those of us in both parties and in both Houses of Congress who are concerned about these issues have attempted in direct discussions with the President and in discussions with his senior advisors to understand the White House perspective on these issues and to share our honest and heartfelt concerns. Unfortunately, those efforts have been pointedly rejected.

As elected representatives and as members of the branch of government that the Constitution establishes as preeminent in decisions about the financing of government activities, we have a clear responsibility to take actions we deem appropriate to protect the people of the United States. I think I can speak for members of the Appropriations Committee of both parties in saying that we would much prefer to do this without public confrontation. Nonetheless, the Office of Management and Budget has once again compelled us to such a debate.

SECURING NUCLEAR WEAPONS AND RADIOACTIVE MATERIALS

Perhaps the most important thing we can do in fighting terrorism is to deny organizations such as Al Qaeda access to weapons of mass destruction. The U.S. Department of Energy submitted proposals to tighten security with respect to a number of activities. Secretary Abraham in a letter to the Director of OMB stated:

* * * we are storing vast amounts of materials that remain highly volatile and subject to unthinkable consequences if placed in the wrong hands. These materials permeate the Departmental complex including sites under the programmatic jurisdiction of the National Nuclear Security Administration, the Office of Environmental Management, and the Office of Science * * * Although the initial supplemental and funds appropriated by Congress helped respond to the most urgent near-term security needs, the Department is now unable to meet the next round of critical security mission requirements * * * Failure to support these urgent security requirements is a risk that would be unwise.

The Department of Energy proposed a total of \$380 million to fund a variety of projects to enhance the security of radioactive materials here at home and overseas. These included:

Security measures surrounding the transport of nuclear weapons within the United States,
Improving the manner in which we secure and store plutonium (the most critical and difficult to obtain of the materials used in nuclear weapons); and
The clean-up, transport and securing in a central depository of low-level radioactive materials that could be used as material for building a `dirty bomb.'

The Department requested a total of \$380 million for these and other similar activities. Of that amount, OMB provided only \$27 million or about 7%. The Chief Financial Officer of the Department who was appointed by President Bush last May wrote in exasperation to several senior-level operatives at OMB to state:

We are disconcerted that OMB refused our security supplemental request. I would have much preferred to have heard this from you personally, and been given an opportunity to discuss, not to mention, appeal your decision.

This bill contains \$250 million distributed among the activities requested by the Secretary, \$223 million above the amount requested by the President.

FINDING TERRORISTS WHO ARE ILLEGALLY IN THE UNITED STATES

Another striking omission from the President's supplemental request involved efforts to round up and deport the most potentially dangerous of those individuals who entered the country on visas that have now expired. Currently, there are an estimated 7 million undocumented immigrants in the United States, and only 2,000 interior immigration enforcement officers nationwide. The Immigration and Naturalization Service requested \$52 million for analysts to help find, arrest and deport high-risk individuals who have disregarded the departure dates on their visas. The analysts would use existing databases and work with other law enforcement agencies and the Foreign Terrorist Tracking Task Force to find better methods of identifying and locating such individuals. OMB denied the entire request. This bill contains \$25 million that the Committee believes the INS can spend this year.

MODERNIZING THE FEDERAL BUREAU OF INVESTIGATION

Last fall, OMB denied the Federal Bureau of Investigation two thirds of the \$1.5 billion in funds they had requested in the wake of the September 11th bombing. Among the funds denied was money needed to accelerate the new 'Trilogy' computer system that will become the backbone of all communication within the Bureau. Also included were funds: to enhance the internal security of the FBI's systems and procedures; for high-tech 'cyber cops' and hazardous materials personnel; to improve DNA analysis and surveillance programs; and to make infrastructure and personnel improvements. The Congress provided \$212 million about the President's request. This will permit the Trilogy system to be completed by this summer rather than in 2004, as would be the case under the President's request. It also permitted the Bureau to hire analysts of various backgrounds to help synthesize the broad spectrum of counter-terrorism information in the FBI system.

In January, the FBI argued for additional funds for several critical activities, including to upgrade the security of the new computer system and to begin to convert the enormous number of existing paper files into computer files that could be backed up, protected against loss and easily shared by investigators across the country. They also asked for funds to increase the Bureau's access to foreign language translators and analysts. In total the Bureau stated that they had immediate needs for \$635 million in additional funding. OMB denied all but \$10 million. This bill contains \$112 million for these activities, the amount the Committee believes can be expended before the end of the current fiscal year.

PROTECTING HIGH-RISK PUBLIC FACILITIES

After September 11, the Corps of Engineers informed the White House that it had 316 sites around the country that it considered unduly vulnerable to attack. Some of these were dams and flood control projects that if bombed or sabotaged could cause horrific loss of life and property damage. The Corps argued that simple steps such as installation of fencing and remote TV cameras could in many instances mitigate much of the potential risk. The December supplemental provide sufficient funds to allow security work to begin on the 100 most vulnerable projects. In January, the Corps asked for funds so that work could begin on additional projects that posed less of a threat than those covered in the December appropriation but which nonetheless needed immediate attention. The total cost for meeting that need was \$128 million. OMB denied the entire request. This bill funds the Corps' entire request.

CHAOS AT THE TRANSPORTATION SECURITY ADMINISTRATION

The Bush Administration has spent over five months developing a plan to increase aviation security pursuant to the Aviation and Transportation Security Act enacted after the September 11 terrorist attacks. Unfortunately, the new Transportation Security Administration (TSA) still cannot answer basic questions about the details of these plans.

The only information provided by the TSA to the Committee arrived less than three weeks ago on the days of April 24, 25 and 29th. That information is now changing apparently because TSA recognized that the proposal was not sustainable after the first round of questions from the Congress and the press.

Among those questions were why TSA screening guards with two years of experience would be paid \$84,000 a year--more than airport managers in many of the airports in which they would be located. So far, TSA's response to this is that they are reviewing the salary structure. In fact, the salary levels that TSA provided on April 29 showed salaries for law enforcement officers, Federal security directors and Federal security director staff that in some instances will be higher than those of the mayor of the town or airport director.

A second question was why TSA requested no funding to pay for airport construction costs for proper placement of explosive detection equipment. The latest information from the agency would have the federal government spending \$650 million for the purchase of massive baggage screening equipment without any plan or funding to construct facilities in which to locate the equipment. Presumably the new machines would upon their arrival

be placed in warehouses at government expense until adequate facilities could be constructed.

A third question that the agency has failed to answer is why the TSA needs more than 600 people in its Washington headquarters. Further, there is no explanation for why it plans to pay an average staff salary (including benefits) at its headquarters in Washington D.C. of \$112,600. This exceeds the average staff salary (including benefits) for the DOT Office of the Secretary, FAA headquarters staff, Supreme Court, and the White House Executive Office of the President.

TSA can still not tell us how many people it will employ when it reaches full strength although there are rumors that internal discussions have included figures approaching 70,000 for the air transportation portion alone.

Still other questions include: what plans have been devised for installing explosive detection equipment and trace detectors? Does TSA plan to install this equipment in airport lobbies or in the baggage routing area? Does TSA plan to open all bags to be checked with trace detection equipment in front of the passenger?

In addition, we have not been assured that the TSA has appropriately addressed the Inspector General's concerns that TSA may be allowing payments to its contractors before the verifying that the work has been performed. The TSA, which will quickly become bigger than the FBI, the Customs Service, the DEA and the Secret Service combined, should not be starting out with sloppy accounting practices, but it has begun just that way.

While TSA complains that OMB bears a major portion of the blame for the slowness of their decision making process and the fact that so little information was shared with the Congress, there is little evidence that OMB effectively challenged the faulty assumptions that are now placing the entire program in such a state of chaos. OMB evidently recommended that Congress appropriate \$4.4 billion to the agency for operations between now and the end of the fiscal year in September, without a clear understanding of either its staffing plans or its pay scale.

At the same time OMB ignored numerous important safety needs in the transportation area. They failed to provide an effective communication system for the Sky Marshal program. They failed to fund a program that would ensure the rapid replacement of existing cockpit doors that will ensure that pilots will not be interfered with. They failed to fund the airport facilities needed for the luggage screening equipment.

Finally, OMB provided the Coast Guard funds sufficient to maintain through the end of the fiscal year only 500 of the 1700 Coast Guard Reserves now on active duty. That dramatic decline will largely come out of the force now dedicated to port security.

UNWISE REDUCTIONS IN GUARD AND RESERVE MOBILIZATION COSTS

The Committee is to be commended for adding \$790 million above the Bush Administration's budget request for the extra FY 2002 costs to pay National Guard and Reserve personnel called to active duty in support of Operation Enduring Freedom and Operation Noble Eagle. (This excludes the costs of National Guard personnel supporting other homeland security missions such as airport security and border security that are funded by other agencies.) By all accounts, these personnel have been doing superb work and have been essential to the success of our military operations to date. They deserve high praise for their professionalism and commitment, and should be fully supported by the Congress.

It is troubling that the Committee was forced to add significant sums to this bill for such a fundamentally important and basic item as the pay of Guard and Reserve personnel. It is well known that a major reason for the weeks of extra delay the Administration experienced in submitting the Supplemental budget request to Congress was the internal squabble between the Defense Department and the OMB over Guard and Reserve pay costs. In the end, OMB won the fight, and the Defense Department is now in the early stages of planning to demobilize 14,5000 reservists, nearly 20% of the total called up, due to the lack of money in the President's request.

This is a very poor policy decision that belies the President's commitment to spend `whatever it takes' to win the war on terrorism.

The Administration's budget decision that forces early Guard and Reserve demobilizations came at virtually the same moment the Secretary of Defense had issued an internal memorandum to his senior staff complaining that the high pace of operations from the war on terrorism was taking a heavy toll on the entire military force. The Secretary's March 13, 2002 memorandum reads in part:

* * * We have had stop-loss in place for some months, preventing people on active duty from leaving the Service. In addition, we are extending the assignment of thousands and thousands of Guards (sic) and Reserves, who have been called away from homes and normal employment to serve on active duty.

The entire force is facing the adverse results of the high-paced optempo and perstempo.

We are past the point where the Department can, without an unbelievably compelling reason, make additional commitments.

In the meantime, we now have fresh warnings that a reconstituted Al Qaeda is planning an attack in the U.S. bigger than the September 11th attack, and the Senate Intelligence Committee is expressing deep concern that the Pentagon has found it unable to fill 3,000 vacant military billets needed to support critical intelligence programs (Sen. Rpt. 107-149, p. 12).

There is good reason for recent press reports that Guard and Reserve personnel are confused and angry. A month ago, many of them were being told that their service was so vital to the war on terrorism that their activations might have to be extended. Now they are being told they may be demobilized in the coming weeks because the Pentagon doesn't need them after all.

This harkens back to the attitudes of 10 to 15 years ago when Guard and Reserve personnel were regarded as second-class citizens compared to the active forces. It is time for decision-makers in the administration to understand and appreciate the extent to which today's Guard and Reserve forces are integrated into our military structure. Our military simply can't function in major campaigns without significant support from our reservists, and they certainly don't deserve to be made part of a game of budget ping-pong.

As of March 11, 2002, a total of 83,021 Guard and Reserve personnel had been called to active duty to provide vital support in such areas as security and force protection, intelligence, combat air patrols, special operations, chemical and biological protection, strategic and tactical airlift, air refueling operations, civil affairs, communications, transportation, infantry, and aero-medical staging. As a result of the OMB budget decision, the Defense Department has initiated a planning process to reduce these forces by 14,500, to around 68,500.

I believe the American people would be appalled if they understood that the number of Guard and Reserve military personnel needed to fight the war on terrorism was not being set by military experts, but by OMB accountants.

The Committee action to add \$790 million to the \$4.1 billion budget request for Guard and reserve pay costs is designed to put the decision of how many reservists we require to fight the war on terrorism back into the hands of the Defense Department, instead of OMB. These funds, when combined with other funds previously appropriated to the Defense Department, should obviate the need to make demobilizations for any other reason than military necessity.

GUARD AND RESERVE MOBILIZATION COSTS

	Bush request	Committee recommendation	Funding Increase
Army	\$1,389,700,000	\$1,786,700,000	+\$397,000,000
Navy	414,200,000	631,200,000	+217,000,000

Marine Corps	206,800,000	210,800,000	+4,000,000
Air Force	1,848,500,000	2,020,500,000	+172,000,000
Defense-wide	243,800,000	243,800,000	
Total	4,103,000,000	4,893,000,000	+790,000,000

Impoundment Authority. But this disagreement does not appear to be resolved despite the bipartisan unanimous agreement to provide these additional funds. There are new indications that OMB plans to continue its fight against these additional funds. At the 11th hour before the full committee mark up, our Chairman received a high level request from the Administration to insert language in the bill that effectively allows OMB to unilaterally impound the extra Guard and Reserve pay funds provided in the bill if it so chooses. The Chairman decided to include this provision for reasons of comity. I believe this is a serious flaw in this bill that exhibits a continuing insensitivity to the important role that our Guard and Reserve forces are making to the war effort. I plan to work hard in conference to restore the full availability of these funds unimpeded by further OMB interference.

TOWARD A MORE CONSTRUCTIVE RELATIONSHIP

Neither branch of government has all of the answers. The Founding Fathers exercised remarkably good judgment when they instituted a system of checks and balances so that matters of public importance would be viewed from different perspectives before final decisions could be made. That process, however, does not need to be hostile or overly adversarial, particularly on issues of national security. It is in the interest of the President, and more importantly, of the country to restore a greater sense of comity and to allow our differing perspectives on security issues to strengthen our solutions rather than create greater divisions between us. We hope that senior advisors to the President will more closely follow the efforts of OMB in reviewing agency budgets and will take steps to see that a more appropriate working relationship between the Congress and the White House develops in the months ahead. The welfare and security of the American people are dependent upon it.

DAVID R. OBEY.

ADDITIONAL VIEWS OF MR. SERRANO

During Committee consideration of the Supplemental, I offered three amendments that were not agreed to. I believe the Committee's actions on my amendments were ill-considered and wrong.

Colombia.--Assistance to Colombia was originally approved by this Congress after numerous assurances by both the Clinton and Bush Administrations that its purpose was to control the production of illicit crops and would not

involve the United States in a wider war. The Colombian military has not made progress on human rights issues and refuses to suspend, investigate and prosecute the highest level officials involved in human rights violations and in aiding and abetting the paramilitaries.

The Supplemental is not the time or the place to expand our assistance to Colombia from efforts to target narcotics trafficking to counter-terrorism activities. Allowing fiscal year 2002 funds made available to the Department of Defense and the Department of State to be used against organizations designated as terrorist organizations such as the FARC, the ELN, and the AUC will represent a significant increase in our country's involvement in Colombia's civil war.

Section 245(i).--Section 245(i) of the Immigration and Nationality Act authorizes undocumented immigrants who are in the United States and eligible for immigrant visas based on family relationships or employment to become lawful permanent residents (LPRs) without leaving the country if they pay a \$1,000 fine. This is a humanitarian measure that allows prospective immigrants to remain with their families--often U.S. citizens--while they go through the process of becoming LPRs. Without this provision, many prospective citizens would be forced to leave the country for up to 10 years. The significance of this legislation cannot be overstated. Indeed, on the day the Committee considered this issue, President Bush, in signing the Border Security and Visa Entry Reform Act, said, 'The bill didn't have everything I wanted. I wanted a temporary extension of 245-I in the bill, which basically allowed certain immigrants, sponsored by their families or employers, to become legal residents without having to leave the country, so that families can stay together. I thought that made sense. It's not a part of the bill; I intend to work with Congress to see if we can't get that done here pretty quick.'

Section 245(i) has been extended several times since it was first enacted in 1994, and it needs to be extended again. Both the House and the Senate have passed legislation to extend the filing deadline for definitive periods of time. While I believe Section 245(i) should be restored in full, the Committee rejected even a limited extension identical to provisions the House passed earlier this year.

State and local enforcement of immigration law.--In 1996, the INS was given authority to enter into agreements with State and local enforcement officials that essentially allow the INS to 'deputize' local law enforcement agents to enforce Federal immigration laws. The first agreement is being negotiated with Florida, and other governments are considering entering into agreements. This authority has never been used before and it should not be used now.

State and local police departments have devoted substantial effort to improving relations with immigrant communities so immigrants, regardless of

status, will report crimes against them and cooperate in investigations. During the Committee markup, I read quotes from leaders of police organizations and police departments who stress both the need to be 'effective partners' with immigrant communities and to 'build bridges to all segments of our community' and the threat immigration enforcement poses to these principles. The agreement being discussed by the INS will erode trust and cooperation, making law enforcement efforts much more difficult.

In addition, the enforcement of Federal immigration law is potentially risky and requires significant training and experience. Without this training and experience, police may target people for immigration enforcement based on their appearance or other characteristics, leading to violations of the rights of U.S. citizens and LPRs. A short period of INS training will not make our local law enforcement officers immigration experts.

My amendment would have prohibited the Justice Department from spending any funds to implement these types of agreements. The right way to deal with the problem of internal enforcement is to provide the immigration experts, the people that are accountable for enforcing our immigration laws-- the INS--with the resources they need to increase internal enforcement efforts. This bill begins this process. The Committee has included \$25 million in this Supplemental to expand INS efforts to identify and remove absconders. This will allow the INS to target its resources, gather intelligence, and identify the greatest threats to our national security.

JOSE E. SERRANO.